

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CRAIG PATTERSON,

Defendant-Appellant.

UNPUBLISHED

October 18, 2005

No. 256614

Wayne Circuit Court

LC No. 03-012223-01

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), possession of marijuana, MCL 333.7403(2)(d), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to one year of probation for both the possession with intent to deliver cocaine conviction and possession of marijuana conviction and two years' imprisonment for the felony-firearm conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that there was insufficient evidence to support his convictions of possession with intent to deliver less than fifty grams of cocaine and felony-firearm. Defendant contends that the evidence showed proximity between defendant and the contraband, which does not, by itself, establish possession. We disagree.

In reviewing sufficiency of the evidence, we must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that all the elements of the offense were proven beyond a reasonable doubt. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004).

The elements of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), are: (1) that the recovered substance was cocaine, (2) that the cocaine was in a mixture weighing less than fifty grams, (3) that the defendant was not authorized to possess the substance, and (4) that the defendant knowingly possessed the cocaine with intent to deliver. *People v Gonzalez*, 256 Mich App 212, 225-26; 663 NW2d 499 (2003). Here, the first three elements are not in contention.

A showing of dominion and control, or the right of control, over something with the knowledge of its presence and character, establishes possession. *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). Actual physical possession of the substance is not necessary to establish this fourth element of the crime. Constructive possession is sufficient and occurs when the totality of the circumstances creates a sufficient nexus between the defendant and the contraband. *People v Johnson*, 466 Mich 491, 499-500; 647 NW2d 480 (2002).

In order to show the intent to deliver, a defendant must knowingly possess a controlled substance, must know the identity of the substance and must have intended to deliver the substance to someone else. *Johnson, supra*, p 499-500. Intent to deliver may be inferred from the quantity of the controlled substance found and from the manner in which it was packaged. Only minimal circumstantial evidence is necessary to show the intent to deliver. *People v Hardiman*, 466 Mich 417, 422; 646 NW2d 158 (2002); see also *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748, mod 441 Mich 1201 (1992).

Defendant was found in a bedroom with cocaine on and in the dresser in that bedroom. The record establishes that the bedroom belonged to defendant. Thus, a sufficient nexus was established to show possession of the cocaine. The intent to deliver the cocaine was established by the quantity of the substance and the fact that it was packaged in forty-two separate bags. Therefore, possession with intent to deliver cocaine was established.

Felony-firearm, MCL 750.227b, is the possession of a firearm during the commission of a felony. All that is necessary to establish felony-firearm is that defendant possessed a firearm while he committed, or attempted to commit, a felony. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003), quoting *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Two elements must be shown to prove felony-firearm. First, defendant must have possessed a firearm. Second, this possession must occur at the time of an underlying felony. *People v Burgenmeyer*, 461 Mich 431, 436; 606 NW2d 645 (2000). Possession may be either actual or constructive, and may be proved by circumstantial evidence. In order to establish constructive possession of a firearm, defendant must be aware of the location of the firearm and it must be reasonably accessible to him. *Id.* at 437, quoting *People v Williams*, 212 Mich App 607, 609; 538 NW2d 89 (1995), rev'd in part on other grounds *Burgenmeyer, supra*, p 440.

It is unlikely that defendant would not be aware of the firearm because it was visibly resting behind his bed. Moreover, the firearm was within defendant's reach, and thus, accessible, when the police searched the home. This was sufficient to establish possession. Because possession with intent to deliver less than fifty grams of cocaine is a felony and defendant was in possession of the cocaine and the firearm concurrently, the felony-firearm conviction was also sufficiently established. There was sufficient evidence for a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt on both charges.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder